

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re application of

May 18, 2007

Steven W. Vogts

Group Art Unit: 3643

Serial No. 10/808,773

Examiner: David J. Parsley

Filed: 3/25/2004

Confirmation No.: 5912

For: AMPLIFIED FISHING ROD HANDLE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

I. BACKGROUND

This application was filed on 3/25/2004. This application recognizes that increased sensitivity to fish strikes is highly sought after by fisherman. Most current fishing rod designs have “blank through” construction, wherein the rod blank is inserted through a cork or a foam handle that is glued to and surrounds the rod blank. The claimed invention recognizes the failure of the prior art to adequately take advantage of vibrations emanating from the rod blank. Specifically, prior rod blanks use materials such as cork and solid foam in the rod handle. Such materials are *known vibration absorbing materials*. Such materials defeat the vibration conducting purpose of the fishing rod.

The claimed invention teaches a fishing rod having “blank through” construction, whereby the rod blank is inserted through the rod handle and through a series of vibration transmitting disks, the disks being provided to transmit vibration from the rod blank to the thin walled rod handle such that the fisherman’s hand is in direct contact with a conductive handle, the purpose of the claimed invention being to increase feel by transferring the vibration caused by a fish strike to the angler’s hand.

A first Office Action was issued on 10/3/2005. In the first Office Action, the Examiner rejected all claims on the grounds of anticipation (Orme and Potter) and obviousness (Potter in view of Venturi, Tabor and/or Brackett et al). In response, Applicant filed Amendment A on 1/3/2006 with all claims remaining as filed with the exception of claim 8 which was amended.

A second Office Action was issued on 3/2/2006. In the second Office Action, the Examiner again rejected all claims essentially along the same lines as in the first Office Action. In view of the second Office Action, counsel for Applicant requested a telephonic interview with the Examiner.

On 4/12/2006, and prior to the telephonic interview with the Examiner, counsel for Applicant faxed proposed claim amendments to the Examiner in preparation for that interview.

On 4/13/2006, counsel for Applicant conducted a telephonic interview with the Examiner. During that interview, counsel understood that the Examiner was looking for language to the effect that, by virtue of the vibration disks being spaced apart along that portion of the rod blank contained within the hollow handle member, a number of hollow area "segments" were formed between the disks. It was counsels' understanding that it was the Examiner's view that this feature was not contained in the prior art.

Following the interview of 4/13/2006, Applicant filed Amendment B on 5/15/2006, taking into consideration the comments received from the Examiner. In Amendment B, claim amendments were included which were believed to place the Application in position for Allowance. Counsel also believed that they had captured the essence of what the Examiner was suggesting during the telephonic interview.

On 5/19/2006, an Advisory Action Before the Filing of an Appeal Brief was mailed by the Examiner on the grounds that the proposed Amendments contained in Amendment B raised new issues that would require further consideration and/or search.

On 7/18/2006, a third Office Action was issued. In that third Office Action, the Examiner again rejected all claims presented on the grounds of anticipation (Davis) and obviousness (Davis and Davis in view of Tabor, Brackett, and Potter).

II. THE SPECIFIC CLAIM REJECTIONS PURSUANT TO § 102(A)

The Examiner rejected claims 1-3, 5, 9, 13, 15 and 19 under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 2,830,399 to Davis. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Amended claim 1 reads as follows:

A fishing rod handle which comprises:
a handle member, said handle member having an external surface surrounding a hollow internal area, the hollow internal area being defined by an internal surface;

a fishing rod blank having a cross-sectional dimension that is smaller than that of the hollow internal area of the handle member and *having a first portion within the hollow internal area of the handle member* and a second portion protruding from the handle; and

a plurality of vibration disks, each of the disks being attached to the first portion of the fishing rod blank in direct contact with the internal surface of the hollow internal area of the handle member and at intervals such that a hollow segment is formed between adjacent vibration disks and such that a plurality of hollow segments are formed within the hollow internal area of the handle member, *wherein vibrations emanating from the rod blank are transferred through the vibration disks to the handle member via contact with the internal surface of the handle member.* (emphasis added)

Amended claim 13 is as follows:

13. A vibration amplifying fishing rod handle which comprises:

a longitudinally extending and generally cylindrical handle member defined by an external surface surrounding a hollow internal area and an end the hollow internal area being defined by an internal surface;

a longitudinally extending fishing rod blank having a diameter that is substantially smaller than that of the hollow internal area of the handle member, *a first portion within the hollow area of the handle member* and a second end protruding from the handle member; and

a plurality of vibration members, *each of the vibration members being attached to the first portion of the fishing rod blank in direct contact with the internal surface of the hollow internal area of the handle member* and at intervals such that the rod blank is fixed at the center of the handle member by the vibration members and such that a hollow area is formed between adjacent vibration members wherein vibrations emanating from the rod blank are transferred through the vibration members to the handle member via direct contact with the internal surface of the handle member.

III. EXAMINER'S REJECTION – INDEPENDENT CLAIMS 1 AND 13

Applicant agrees that in Fig. 4, Davis discloses a fishing rod handle comprising a handle assembly 68 comprised of a hand grip 70. The hand grip 70 surrounds a hollow internal area that Davis denotes as a storage compartment 90. Applicant also agrees that shaft 92 is smaller in diameter than the hollow storage compartment 90.

However, the Examiner's statement that Davis anticipates the claimed invention because it discloses:

a plurality of vibration disks – at 88, the disks being attached to the first portion of the fishing rod blank at intervals – see item 84 in figure 4, such that a hollow segment is formed between to adjacent vibration disks – see figure 4, and a plurality of hollow segments are formed within the hollow internal area of the handle member – see the areas between items 88 in figure 4, wherein vibrations emanating from the rod blank are transferred through to the vibration disks – see figure 4 where the rod blank is connected to the disks and therefore any vibrations in the rod blank would be transferred to the disks and then to the handle (Office Action, p. 3)

misstates the clear teaching of Davis. But for this factual error, applicant respectfully submits that 1 and 13 are in position for allowance. As a result, the remainder of the rejected claims are also in position for allowance.

IV. DAVIS FAILS TO TEACH “ANY VIBRATIONS IN THE ROD BLANK WOULD BE TRANSFERRED TO THE DISKS AND THEN TO THE HANDLE”

As an initial matter, Davis does not teach a rod having “blank through” construction.” As shown in Fig. 4, the rod 62 has a threaded rear end 64 for inserting into the threaded aperture of the handle 70. The rod 62 is further connected to the handle via shaft 92, which runs through the handle 70 and supports the tubular sleeve 86 and the longitudinally spaced blocks 88. As such, the rod blank 62 that Davis references terminates where it is screwed into the edge of the handle. While the rod blank 62 is attached to shaft 92, which is within the handle 70, the rod blank 62 does not transmit vibration to the disks as stated by the Examiner.

Additionally, Davis does not disclose a plurality of vibration disks that extend from the rod blank to the handle and that transfer vibration. Davis discloses a fishing rod handle 10 having a hollow internal storage compartment 90. The hollow internal storage compartment contains a “holder” 84 comprising “a tubular sleeve 86 having integral therewith a plurality of longitudinally spaced enlarged blocks 88.” Col. 2, lines 46-47. Generally, the holder 84 is attached to a threaded rear end 104 threaded in the threaded recess 82 in the plug 80. Thus, by rotating the plug 80 and removing the plug from the hand grip 70, the tube 102 may be moved longitudinally and removably out of the hand grip 70 so as to provide access to the holder 84 and the lures impaled therein. Generally, Col. 2, lines 52-67.

Davis fails to disclose structure or means for transmitting vibration from the rod blank to the rod handle for a number of reasons. As an initial matter, both Figs 1 and 4 depict the items the Examiner refers to as “vibration members 88” clearly failing to come into contact with the external surface of the handle. *As no contact is disclosed by Davis, there can be no transmission of vibration.*

In fact, space between the vibration members 88 and the internal surface of the storage compartment 90 is actually required for the Davis to device to fulfill its mission as a storage device. That is, if a hook or lure was impaled on one of the vibration members 88, and the vibration member actually was in contact with the internal surface of the storage compartment, it

would obviously be impossible to re-insert the vibration members 88 into the storage compartment 90.

V. CONCLUSION

Applicant respectfully submits that the Davis reference fails to teach or suggest the limitations of the claimed invention and that, therefore, all claims are in position for allowance.

Respectfully submitted,
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